

SECTION 8. OPERATING PERMITS – CONTENT.

- (A) Each Class I Operating Permit shall include the standard permit requirements in paragraphs (B) through (K) of this section.
- (B) Emission Limitations and Standards. Each operating permit shall specify emission limitations and standards, including those operational requirements and limitations that assure compliance with all requirements applicable at the time of permit issuance.
- (1) The permit shall specify and reference the origin of, and authority for, each term or condition. In addition, it shall identify any difference to the terms or conditions as compared to the applicable requirement upon which the term or condition is based.
 - (2) Where an applicable requirement is more stringent than an applicable requirement specified in Article 2, Section 26, both provisions shall be incorporated into the permit.
 - (3) If an applicable implementation plan or an applicable requirement allows a source to comply through an alternative emission limit or means of compliance equivalent to that contained in the plan, a source may request that such an alternative limit or means of compliance be specified in its permit. Such an alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicated procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application.
- (C) Permit Duration.
- (1) Class I and Class II operating permits shall be issued for a fixed term not to exceed five (5) years;
 - (2) The term of a permit shall not be extended by modification beyond the maximum duration specified, except that the conditions of an expiring permit shall continue until the effective date of a new permit in accordance with Article 2, Section 12, provided that:
 - (a) The permittee has submitted a timely application (except as provided in paragraph (C)(3) below) which has been deemed complete by the Department, and
 - (b) The Director, through no fault of the permittee, does not issue a new permit with an effective date before the expiration date of the previous permit.
 - (3) A Class II permittee who has failed to submit a permit renewal application by the deadline established in the current permit may apply for a variance in order to have the conditions of an expiring permit extended until the effective date of a new permit. The variance request shall be submitted no later than thirty (30) days after the deadline for submittal of the permit renewal application and according to the requirements of Article 1, Section 5. The Director may grant a variance of up to sixty (60) days to submit the permit renewal application.
- (D) Monitoring and Related Record Keeping and Reporting Requirements.
- (1) Each Class I operating permit shall contain the following monitoring requirements:
 - (a) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods established in Article 2, Section 21 or pursuant to any permit or order issued by the Director under the LLCAPCPRS.
 - (b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.
 - (c) As necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods and quality assurance and control procedures.
 - (2) Each Class I operating permit shall incorporate all applicable record keeping requirements and require, if necessary, the following:
 - (a) Records of required monitoring information that include the following:
 - (1) The date and place as defined in the permit, and time of sampling or measurements;
 - (2) The date(s) analyses were performed;
 - (3) The company or entity that performed the analyses;
 - (4) The analytical techniques or methods used;
 - (5) The results of such analyses; and
 - (6) The operating conditions existing at the time of sampling or measurement.

- (b) Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. The permit may specify that records may be maintained in computerized form.
 - (3) Each Class I operating permit shall incorporate all applicable reporting requirements and require the following:
 - (a) Submittal of reports of required monitoring at least every six (6) months. All instances of deviation from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official in accordance with Article 2, Section 7, paragraph (H).
 - (b) Reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permit shall require reporting of deviations as follows:
 - (1) Any deviation resulting from emergency or upset conditions as defined in Article 2, Section 11 shall be reported within two (2) working days of the date on which the permittee first becomes aware of the deviation, if the permittee wishes to assert the affirmative defense authorized under said section;
 - (2) Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported as soon as is practicable;
 - (3) Any other deviations that are identified in the permit as requiring more frequent reporting than the permittee's semi-annual report shall be reported on the schedule specified in the permit.
 - (4) All reports of deviations shall identify the probable cause of the deviations and any corrective actions or preventative measures taken.
 - (4) Every report submitted under paragraph (D)(3) of this section shall be certified by a responsible official, except that of a deviation required under paragraph (D)(3)(b) of this section must be submitted within ten (10) days of the deviation, the report may be submitted initially without a certification if an appropriate certification is provided within ten (10) days thereafter, together with any corrected or supplemental information required concerning the deviation.
- (E) Acid Rain. Each Class I permit issued to an affected source shall include a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under the Act.
- (1) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Title IV Acid Rain program developed under the Act, provided that such increases do not require a permit revision under any other applicable requirement.
 - (2) No limit shall be placed on the number of allowances held by the source.
 - (3) The allowances a source possesses shall not be a defense to noncompliance with any other applicable requirement.
 - (4) Any allowances shall be accounted for according to procedures established in Article 2, Section 26.
- (F) Severability. Each Class I and Class II permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
- (G) General Conditions. Each operating permit shall contain the following provisions:
- (1) The permittee must comply with all conditions of the Class I and Class II operating permit. Any permit noncompliance shall constitute a violation of the LLCAPCRS and the Act, and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
 - (2) It shall not be a defense for a permittee in an enforcement action to claim that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 - (3) The permit may be modified; revoked, reopened, and reissued; or terminated for cause in accordance with the provisions of the LLCAPCRS. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not supersede any permit condition.

- (4) The permit does not convey any property rights of any sort, or any exclusive privilege.
 - (5) The permittee shall furnish to the Department, within the time specified by the Department, any information requested by the Department in writing to determine whether cause exists for modifying, revoking and reissuing; or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department, copies of records required to be kept in accordance with the permit or, for information claimed to be confidential, the permittee may furnish such records along with a claim of confidentiality pursuant to, Neb. Rev. Stat. §84-712.05.
 - (6) The owner or operator must maintain a copy of the permit application, including any supporting emission calculations or other related materials, on file at the location of the source or at the owner's or operator's main or corporate office.
 - (7) The owner or operator must place a copy of the permit and of the letter of transmittal on file at the location of the source no later than fourteen (14) calendar days after the date of the letter of transmittal. A copy of the permit must also be placed on file at the owner's or operator's main or corporate office no later than thirty (30) calendar days after the date of the letter of transmittal.
- (H) Fees. Each Class I and Class II operating permit shall contain a provision to ensure that sources of regulated pollutants pay fees to the Department consistent with the fee schedule in Article 1, Section 6 and Article 2, Section 29.
- (I) Alternative Operating Scenarios. Each operating permit shall contain terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. Such terms and conditions:
- (1) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which the source is operating;
 - (2) Must ensure that the terms and conditions of each alternative scenario meet all applicable requirements and the requirements of the permit; and
 - (3) The permit shield, if requested, described in paragraph (N) of this section shall apply to all terms and conditions under each such operating scenario.
- (J) Reopening for Cause. Each permit shall include provisions specifying the conditions under which the permit will be reopened, revoked and reissued, or terminated, in accordance with Article 2, Section 15, paragraph (F).
- (K) Risk Management Plans. If the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act or the LLCAPCPRS, the permit will specify that the permittee will comply with the requirement to register such a plan. The content of the risk management plan will not be incorporated as a permit term. The permit shall require:
- (1) Verification of the plan preparation and submittal to the Department, the State Emergency Response Commission, and any local Emergency Planning Committee; and
 - (2) Annual Certification in accordance with Article 2, Section 7, paragraph (F)(2)(i)(3) that the risk management plan is being properly implemented.
- (L) Compliance Requirements. All Class I operating permits shall contain the following elements with respect to compliance:
- (1) Consistent with paragraph (D) of this section, compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a Class I operating permit shall contain a certification by a responsible official that meets the requirements of Article 2, Section 7, paragraph (H).
 - (2) Inspection and entry requirements that require the permittee to allow the Department, EPA or an authorized representative, upon presentation of credentials and other documents, to:
 - (a) Enter upon the permittee's premises at reasonable times where a source subject to a Class I operating permit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
 - (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

- (c) Inspect at reasonable times any facilities, pollution control equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under the permit, and
 - (d) Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
 - (3) A schedule of compliance consistent with Article 2, Section 7, paragraph (F)(2)(h).
 - (4) Progress reports consistent with an applicable schedule of compliance and Article 2, Section 7, paragraph (F)(2)(h), to be submitted at least semi-annually, or at a more frequent period if specified in the applicable requirement or by the Director. Such progress reports shall contain the following:
 - (a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
 - (b) An explanation of why any dates in the schedule of compliance were not met, or will not be met, and any preventive or corrective measures adopted.
 - (5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
 - (a) The frequency, not less than annually or such more frequent periods as specified in the applicable requirement or by the Department, of submissions of compliance certifications;
 - (b) In accordance with paragraph (D) of this section, a means of monitoring the compliance of the source with its emissions limitations, standards, and work practices;
 - (c) A requirement that the compliance certification include the following:
 - (1) The identification of each term or condition of the permit that is the basis of the certification;
 - (2) The compliance status;
 - (3) A determination of whether compliance was continuous or intermittent;
 - (4) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with the paragraph (D) of this section; and
 - (5) Such other facts as the Department may require to determine the compliance status of the source.
 - (d) A requirement that all compliance certifications be submitted to the Administrator as well as to the Department; and
 - (e) Such additional requirements as may be specified pursuant to the LLCAPCPRS, or the applicable Implementation Plan, or any permit issued under the LLCAPCPRS.
- (M) The Director may place such conditions and restrictions upon a permit issued or renewed under this section as he or she deems necessary to protect public health or the environment. Such conditions or restrictions may be placed upon the permit at the time it is issued, modified, or renewed. By the way of example, and not of limitation, such conditions or restrictions may be new federal applicable requirements not yet adopted in the LLCAPCPRS.
- (N) Permit Shield for Class I Operating Permits.
 - (1) If requested in the permit application, the permit shield provided in this section shall be included in the permit.
 - (2) The permit shield shall provide that compliance with a permit during its term constitutes compliance with all applicable requirements identified pursuant to Article 2, Section 7 as of the date of permit issuance, provided that:
 - (a) Such applicable requirements are included and specifically identified in the permit; or
 - (a) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination.
 - (3) The permit shield does not affect:
 - (a) The provisions for granting variances;
 - (b) Liability for any violation of applicable requirements, or applicable requirements under the Act, prior to or at the time of permit issuance;
 - (c) The applicable requirements of Article 2, Section 26;
 - (d) The authority of the Department or EPA to obtain information; or
 - (e) Any other permit provisions, terms, or conditions, including, but not limited to, construction permits issued pursuant to Article 2, Section 17 or permits issued pursuant to other states or local ordinances, rules or regulations.

- (4) A Class I permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (O) Each Class II operating permit shall include those permit requirements applicable to Class II sources and any additional requirements which the Director deems appropriate, including but not limited to, the following:
 - (1) Emissions limitations and standards which are at least as stringent as any applicable requirement or other requirements contained in the State Implementation Plan.
 - (2) Monitoring and related record keeping and reporting requirements.
 - (3) Compliance certification, testing, monitoring, reporting, and record keeping requirements.
- (P) All terms and conditions in a Class I and Class II operating permit, including any provisions designed to limit a source's potential to emit, are enforced by the Administrator and citizens under the Act except those terms and conditions which have been specifically designated as not federally enforceable under paragraph (Q) of this section.
- (Q) Each Class I operating permit shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.
- (R) If an applicable requirement provides for the trading of increases and decreases of emissions without a case-by-case approval of each emissions trade, and if requested by the applicant in its permit application, the Director shall establish terms and conditions for the trading of such emissions increases and decreases within the permitted facility. Such terms and conditions shall include all terms required by the LLCAPCPRS to determine compliance and must meet all terms specified in the applicable requirement which allows such trading.
- (S) If an applicant requests in its application, the Director shall establish terms and conditions in the permit allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. Emissions from emissions units which are not quantifiable and for which there are no replicable procedures shall not be included in any trades. The permit shall also require compliance with all applicable requirements.

Ref: Title 129, Chapter 8, Nebraska Department of Environmental Quality